

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10165 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHMMED SALIM M ANSARI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

Mr.MR ANAND, G.P. with Ms.Ami Yagnik, A.G.P.

for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 13/02/97

ORAL JUDGEMENT

By way of this petition under Article 226 of the Constitution of India the petitioner-detenu Mohmedsalim Salim Murghi Masukali Ansari has brought under challenge the detention order dated 20th August 1996 rendered by the respondent No.2 u/s. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act'.

2. The grounds on which the impugned order of detention has been passed appear at Annexure : B to the petition. They inter-alia indicate that the petitioner by himself and with the aid of his associates has been carrying on criminal and anti-social activities of committing theft of motor vehicles and/or abetting commission of thefts by preparing duplicate keys. The detaining Authority has placed reliance on four offences of 1996, one of Vejalpur Police Station, one of Ellisbridge Police Station, one of Satellite Police Station and one of D.C.B. Police Station, Ahmedabad, the first three being under Sections 379 and 114 I.P.C. and the last being under Sections 399, 400, 307, 188, 114 I.P.C., Section 25/1/B.A., 27 of the Arms Act and Section 135(1) of the Bombay Police Act. The particulars of such offences have been set out in the grounds of detention.

The particulars of the offences which have been relied upon for reaching the subjective satisfaction inter alia indicate that the petitioner was instrumental in preparing the duplicate keys of the locks of various motor vehicles and that is how he has been basically involved in the offences under Section 114 I.P.C. It might be noted that there are no averments of the facts comprising the incident in respect of which CR No.8/96 has been registered. This is the vital difference between this matter and the special Civil Application No.10505 of 1996 in which case there was expression of reaching the subjective satisfaction from the facts recorded from the papers of CR No.8/96. In the present case these facts are missing on the face of the impugned order of detention as also the grounds of detention. In view of this vital distinguishing feature this matter is distinguishable from the other one.

3. It has been recited that the detenu's anti-social activity tends to obstruct maintenance of public order and in support of such conclusion statements of four witnesses have been relied upon. They indicate about the two incidents dated 15.6.1996 and 30.6.1996 indicating beating in public the concerned witnesses and creating atmosphere of fear amongst the people collected at the time of such incidents.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner, however, subject to what is stated above. The petitioner has been stamped as a dangerous person within the meaning of section 2(c) of

the PASA Act.

5. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to conclusion that the same would affect public order. Reliance has been placed on the following decision of the Apex Court :-

Mustakmiya Jabbarmiya Shaikh V/s. M.M.Mehta,
C.P. reported in 1995 (2) G.L.R. 1268, where the incidents were quoted in paras : 11 and 12 of the citation and it has been submitted that facts of the present case run almost parallel to the facts before the Apex Court in Mustakmiya's case (supra).

6. In reply Mr. M.R.Anand, learned G.P. for the State has relied upon a decision in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi V/s. State of Maharashtra and anr., reported in AIR 1992 SC 979. Comparing the facts of the present case with the facts in the case before the Supreme Court, it clearly appears that the decision in Mrs. Harpreet Kaur's case (supra) would not be applicable.

7. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed on the strength of decision of Mustakmiya's case (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner - detenu Mohmedsalim Salim Murghi Masukali Ansari shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

* * * * *